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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,885	03/18/2004	Hubert Bellm	1140668-0061	8199
65989 7590 04/28/2008 KING & SPALDING 1185 AVENUE OF THE AMERICAS NEW YORK, NY 10036-4003				
EXAMINER KASENGE, CHARLES R				
ART UNIT 2121		PAPER NUMBER		
NOTIFICATION DATE 04/28/2008		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

usptomailnyc@kslaw.com

Office Action Summary

Application No.

10/804,885

Applicant(s)

BELL ET AL.

Examiner

CHARLES R. KASENGE

Art Unit

2121

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-23, 25-31, 33, 34 and 36-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-23, 25-31, 33, 34 and 36-39 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/4/08 has been entered.

Response to Arguments

2. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Claim Objections

3. Claim 13 is objected to because of the following informalities: in line 2, "the control" should be "the control unit". Appropriate correction is required.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 25-30 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims are directed to software which is nonstatutory.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 11-23, 25-31, 33, 34 and 36-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Miyoshi U.S. Patent 5,411,686. Regarding claims 11, 25, 29-31, 34 and 36-39, Miyoshi discloses a method for monitoring a control process executed by a control unit for an injection-molding process, the method comprising the steps of: (a) acquiring, using at least one sensor (Fig. 2-5, S1-S3), actual values of at least one process variable of the injection-molding process, the actual values of the at least one process variable comprising at least one selected from the group consisting of temperature, pressure, feed rate, and rotational speed (col. 11, lines 39-43); and (b) transmitting the acquired actual values of the at least one process variable to the control process and transmitting the acquired values from the control process to a monitoring process executed by a computer (col. 4, lines 33-38) for monitoring the control process (col. 11, lines 39-43); (c) evaluating the transmitted actual values (col. 11, lines 39-54), (d) determining based on the evaluated actual values, at least one setpoint value comprising at least one selected from the group consisting of temperature variations, pressure variations, feed rate variations, and rotational speed variations (col. 11, lines 55-58; col. 13, lines 55-60), and (e) transmitting the at least one setpoint value to the control wherein monitoring the control (col. 9, lines 30-39), evaluating the transmitted actual values and determining the at least one setpoint value are performed by the computer (col. 4, lines 33-38; col. 15, lines 20-31).

Regarding 12, 18, 20, 21 and 26, Miyoshi discloses the method according to claim 10, further comprising the step of receiving at the computer at least one input from an operator and sending the received at least one input to the control process virtually in parallel with the execution of the monitoring process (col. 12, lines 40-48).

Regarding claims 13, 27, and 33, Miyoshi discloses the method according to claim 10, further comprising the step of receiving at the computer at least one output from the control and sending the received at least one output to an operator (section D) virtually in parallel with the execution of the monitoring of an injection-molding process (col. 12, lines 45-48).

Regarding claims 16, 19, 23 and 28, Miyoshi discloses the method according to claim 10, wherein the control comprises a software process, the software process executed by the computer under an operating system comprising real-time capability, the software process executing virtually in parallel with transmitting the actual values acquired by the control to the computer for monitoring (col. 11, lines 39-59).

Regarding claim 17, Miyoshi discloses the method according to claim 10, wherein the monitoring is carried out using a computer program, the computer program executed on the computer (col. 13, lines 4-8).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 14, 15 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miyoshi as applied to the claims above. Miyoshi does not explicitly disclose receiving and sending input or output is executed by the computer under an operating system comprising non-real-time capabilities.

Official notice is taken that non real-time systems are well known at the time the invention was made in the analogous art of data processing.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to have the operator distribute the input/output data not in real time. One of ordinary skill in the art would have been motivated to do this in order to give the operator time to review the data before it influences the control process.

Therefore, it would have been obvious to modify Miyoshi to obtain the invention as specified in claims 14, 15 and 22.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles R. Kasenge whose telephone number is 571 272-3743. The examiner can normally be reached on Monday through Friday, 8:30 - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo Picard can be reached on 571 272-3749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2121

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CK

April 23, 2008

/Charles R Kasenge/

Primary Examiner, Art Unit 2121